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**FILED**

OCT 14 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK D. MESSERSMITH,

Defendant.

No. CR 10-00572 MAG

STIPULATION AND ~~PROPOSED~~  
ORDER CONTINUING HEARING TO  
October 21, 2010 AND EXCLUDING  
TIME FROM October 14, 2010 TO October  
21, 2010 FROM THE SPEEDY TRIAL  
ACT CALCULATION

The Parties, Mark D. Messersmith and the United States, acting through respective counsel, hereby stipulate, subject to the Court's approval, that the hearing currently set for October 14, 2010 at 2:00pm be vacated, and that the hearing be re-set for October 21, 2010 at 1:30pm. The defense is requesting the continuance of the hearing due to the need for additional time for effective preparation, and the need to jointly negotiate a resolution in this matter.

The parties stipulate that the time between October 14, 2010 and October 21, 2010 is excluded under the Speedy Trial Act, 18 U.S.C. §3161, and agree that the failure to grant the requested continuance would unreasonably deny defense counsel reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Finally, the parties agree

1 that the ends of justice served by granting the requested continuance outweigh the best interest of  
2 the public, and the defendant in a speedy trial and in the prompt disposition of criminal cases. 18  
3 U.S.C. §§ 3161(h)(7)(A) and (B)(iv).

4  
5 DATED: October 13, 2010

MELINDA HAAG  
United States Attorney

6  
7 /s/  
8 BRADLEY D. PRICE  
Assistant United States Attorney

9  
10 /s/  
11 ROBERT CAREY  
Attorney for Defendant

**[PROPOSED] ORDER**

Based upon the stipulation of the parties, and for good cause shown, the Court HEREBY ORDERS that the hearing in this matter previously set for October 14, 2010 at 2:00pm is vacated, and the matter is continued to October 21, 2010 at 1:30pm. Further, the Court ORDERS that the time between October 14, 2010 and October 21, 2010 is excluded under the Speedy Trial Act, 18 U.S.C. §3161. The court finds that the failure to grant the requested continuance would unreasonably deny defense counsel reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Furthermore, the Court finds that the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial and in the prompt disposition of criminal cases. The court therefore concludes that this exclusion of time should be made under 18 U.S.C. §§ 3161(h)(7)(A) and (B)(iv).

IT IS SO ORDERED.

DATED: 10/14/10

  
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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE